IN THE HIGH COURT OFJUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.143 OF 2006
IN
FAMILY COURT APPEAL (ST) No.14836 OF 2006
in
M.J.PETITION (A) NO.1633 OF 1997

Sou.Neelam Dadasaheb Shevale.. Appellant

vs

Shri Dadasaheb Bandu Shevale .. Respondent

Mr.Rajiv Mane for Appellant

Mr.R.T.Lalwani for Respondent

CORAM : D.G.DESHPANDE AND
SMT ROSHAN .S.DALVI, JJ
DATE: 28th November, 2006

JUDGMENT (Per Smt R.S.Dalvi, J)

1) The applicant/appellant has taken out this application for condonation of delay in filing her appeal. She is the wife of the respondent who filed a petition for divorce in the Family Court, Mumbai.

2) After a protracted litigation spanning about a decade in the family Court, Mumbai an exparte decree of divorce came to be granted to the respondent on 8th February, 2006. The appellant

has filed this appeal on 30th June, 2006 after a delay of 86 days which is neither computed and stated nor explained. After the impugned order was passed on 8th February, 2006 the appellant applied for its certified copy on 23rd May, 2006 which was itself after the period of limitation, 105 days having transpired. The appellant received the certified copy on 16th June, 2006 after which further 15 days transpired before filing the appeal.

3) Though the appellant has not mentioned the extent of the delay as required, that computation has been done by the respondent and verified by the Court. The delay of 86 days is required to be explained by the applicant/appellant.

4) The application is filed by the appellant personally and consequently her Advocate has argued that the application for condonation of delay may not have the finesse which would be available in

an application filed by the lawyer.

5) We accept that we must judge the application on the premise that it is filed by a litigant herself.

6) The application shows that the appellant is challenging the ex parte order of the Family Court, dated 8th February, 2006. It shows that she is a resident of Pandharpur and is required to travel 450 kms to attend the proceedings in Mumbai. After setting out the earlier order of interim maintenance and travelling expenses granted to her, the application shows in its penultimate paragraph that:

> **" I say that under the above mentioned circumstances, I was not able to travel to Mumbai and was not able to engage an Advocate and therefore there is delay in filing this FCA. "**

7) The "above mentioned circumstances" show only one circumstance as to the delay caused by travelling required for making this application. That cause is that the appellant's residence is 450

kms away from the city where she is required to attend the court proceedings. The rest of the application which sets out the order of the interim maintenance and travelling expenses do not show any circumstance that would make it unable for her to attend the court proceedings. It also does not show why she is not able to engage an Advocate.

8) The respondent has strongly opposed this application on the ground of dishonest claim as to the inability to attend the proceedings in Mumbai made by the appellant as well as on the ground that the appellant is not a novice to the court proceedings requiring her to evoke undeserved sympathy of the Court.

9) In view of the total absence of any sufficient cause showing delay which is required to be contained in the application, we were required to see

how the appellant could be stated to have made a false case for condonation of delay and to see how the appellant has even in the past been used to court proceedings.

Falsity of the claim of the appellant

10) The affidavit in reply of the respondent opposing the application for condonation of delay shows what transpired with regard to the lis between the parties in various proceedings. The affidavit shows that the very contention of the appellant that she is a resident of Pandharpur is false and that she resides in Mumbai with one B.S.Rath. The affidavit also shows that the appellant filed a Writ Petition being Writ Petition No.3999 of 2005 in which she made an application for amendment just one day prior to passing of the decree in the Family Court. She was therefore, present in Mumbai one day before the ex parte decree came to be passed. Yet, she never attended the court when required.

11) The affidavit further shows that the appellant had personally served the respondent a copy of the said application for amendment to Writ Petition No. 3999 of 2005 in Oshiwara Police Station on 14th February, 2006. She was therefore in Mumbai on that date also.

12) The affidavit further shows that the appellant had attended the Family court, Mumbai on 9th May, 2006 to withdraw the maintenance amount deposited by the respondent in Family Court, Mumbai.

13) The statement of the appellant is therefore not simplicitor denied by the respondent. The respondent has stated with whom the appellant resides in Mumbai. The respondent has shown 3 diverse dates before and after the ex parte decree came to be passed when the appellant was in Mumbai and attended the court proceedings and related matters in Court.

14) The affidavit in reply is filed on 24th July, 2006. This application came up on board thereafter on 1st August, 2006, 28th August, 2006, 30th August, 2006, 22nd September, 2006 and 13th October, 2006 before the Diwali vacation. The appellant is represented by an Advocate. No affidavit in rejoinder is filed. The statements made in the affidavit in reply by the respondent must therefore be taken to be correct. These statements strike at the very root of the cause sought to be shown by the appellant namely viz that being a resident of Pandharpur she has to travel 450 kms to Mumbai. The very foundation of the appellant's case therefore collapses. Absolutely no other cause is shown.

The lis between the parties

15) The affidavit in reply of the respondent shows that the parties lived for only 7 months in matrimony and after which have litigated for 10 years. The

appellant has taken out 15 proceedings including 5 Writ Petitions, 4 transfer petitions, 2 Family Court Appeals, 1 Contempt Petition including the main family court litigation. She has also taken out proceedings in Pandharpur.

16) The decree came to be passed against the appellant even earlier. That decree came to be set aside by this Court. The appellant was given liberty to lead evidence which opportunity she did not avail resulting in a second decree being passed ex parte.

17) For these litigations, the appellant has engaged 8 different advocates in Family Court after which 3 other advocates were appointed by the Court for her. Each of the 8 advocates have ceased to appear. She is now represented by a new Advocate.

18) The mere number of these proceedings show that the appellant is a seasoned litigant. She is expected to know not only the date of her hearing and

attend to the same but also the factum of obtaining the certified copies of the orders to challenge the ex parte decree within time. She is also expected to know the consequences of the delay, if any, in prosecuting her litigation and the cause which would be sufficient for condonation of delay if any. She is also expected to file a rejoinder denying the statements made by the respondent if they are false to her knowledge. She having done none of these must take legal consequences of such failure.

19) We may mention that in another proceedings for challenging another order of the Family Court in supervisory jurisdiction of this Court, an order came to be passed by Justice S.U.Kamdar (as he then was) on 13th December, 2005 in Writ Petition No.8339 of 2005 in which the following observation came to be made by him as the introductory remark against the appellant.

> "Justice tempered with mercy is the hallmark of Indian judicial system. However,it is most

> unfortunate when a litigant takes undue advantage of the mercy shown in the course of litigation. Present is a case of the petitioner who has been misusing the merciful attitude of the court which has been adopted so far towards her whilst deciding a number of proceedings initiated by her in this court. ....."

20) This order annexed as Exhibit A to the affidavit in reply of the respondent shows not only the attitude of the appellant but, the number of proceedings initiated by her. In this order, costs of Rs.10.000/- were ordered to be paid by the appellant to the respondent. The appellant challenged that order in Supreme Court. Her SLP came to be dismissed. She thereafter paid costs of Rs.10,000/- to the respondent, on 22nd September, 2006 in compliance of the aforesaid order in this Court. This was during the pendency of this application when this application came to be adjourned on the number of dates aforesaid.

21) We may also mention that during the pendency of these proceedings, the appellant has

written a letter to one of the Judges in this Court constituting the Division Bench before which this application came to be assigned making a reference to earlier proceedings and amounts ordered to be given by the respondent to the appellant as court expenses and maintenance and making needless references to the “ daughters” of the respondent by earlier marriage and requesting the Judge to modify the order. That letter has been directed to be placed in the appropriate file and accordingly has been placed in this proceeding.

22) From the above, it can be seen that the appellant is fully aware of the court proceedings and has deliberately or negligently failed to attend the court proceedings as required and has made false statements about her residence in a bid to show sufficient cause for condoning the delay made by her in filing this appeal. No litigant can be shown sympathy of the Court upon a cause resting on dishonesty. Dishonesty of the appellant has been amply shown by

various instances as detailed hereinabove by the respondent.

23) We find besides this, the affidavit in reply shows that the respondent has re-married on 7th April, 2006 at village Shevalewadi, Taluka Karad, District Satara after the appeal period of 30 days from the date of the order expired under the provisions of section 28 (4) of the Hindu Marriage Act, 1955. Upon re-marriage the appeal itself has become infructuous.

24) For all the above reasons, the application for condonation of delay is dismissed with costs fixed at Rs.3000/- condition precedent.

(Smt Roshan Dalvi, J) **(D.G.Deshpande,J)**